COURT NO.2

THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Appeal from Order No. 442 of 2003

New India Assurance Co. Ltd. … **Appellant.**

Versus

Shi Kumar
and others. … **Respondents.**

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988, (***in short the Act***) against the judgment and Award dated 28-09-2003 passed in M.A.C. Case No. 54 of 2002, Shiv Kumar & others Vs. Mohan Lal & others, by Motor Accident Claims Tribunal/Addl. District Judge, I F.T.C. Hardwar ***(in short the Tribunal)*** whereby the learned Tribunal has allowed the claim petition and has awarded Rs.4,62,632/- as compensation along with interest @ 8% per annum, as mentioned in the impugned order, in favour of the claimant-respondent No. 1 to 3 under Section 166 of the Act as against the O.P.No.3-appellant. Aggrieved, the Insurance Company-appellant has come up in appeal for setting aside the impugned judgment and award passed by the learned Tribunal mainly on the ground that the accident in question was caused due to contributory negligence of the scooterist and the driver of the offending vehicle both and that the quantum of award is exorbitant and the Tribunal has failed to appreciate the evidence on record and the there was no evidence on record to show that the driver of the offending vehicle was holding a valid driving licence.

Brief facts giving rise to the present appeal, are that Brij Pal Singh Chauhan (***the deceased***) was going on his scooter No. UP 10B-6755 on 24.2.2002 from his village towards Jwalapur. At about 8-30 p.m., the said scooter was hit by a Tanker No. U.P. 25-8667 being driven rashly and negligently by its driver, with the result

the deceased sustained grievous injuries and consequently died, when he was being taken to the hospital. The deceased was aged 57 years and was employed in the B.H.E.L. Hardwar. Hence the claim petition has been filed by his legal heirs and dependents. The Opposite Parties contested the claim petition by filing their written statements. The Opposite Party No. 3-appellant has asserted in its written statement (paper no. 22-Kha) that the offending truck was insured with the Company; that the owner of the scooter and the insurer thereof have not been arrayed as party, therefore, the petition is bad for non-joinder of necessary parties and that the accident was caused due to own rashness and negligence on the part of the scooterist, the deceased, and the motor accident was not the outcome of rash and negligent driving by the driver of the offending Tanker. The learned Tribunal framed as many as five Issues in the case. Motor accident resulting into grievous injuries and consequent death of the deceased was caused due to rash and negligent driving by the driver of the Tanker No. UP 25-8667. It has further been held that there was no negligence on the part of the deceased, who was going on scooter no. UP 10B-6755. The learned Tribunal has further held on Issue No. 2 that the O.P. No. 1 Mohan Lal was holding a valid driving licence for driving heavy motor vehicles and the vehicle in question was duly insured with the New India Assurance Company-appellant. It has also been found that the owner was possessing all valid papers in respect of the offending Tanker. On Issue No.3, It has been held that the petition was not bad for non-joinder of owner of scooter (the learned Tribunal has awarded compensation of Rs. 4,62,632/- along with interest @ 8% per annum, as mentioned in the impugned order.

We have heard learned counsel for the appellant-Insurance Company, Sri T.A.Khan, as well as learned counsel for the claimant-respondents Mr. Sanjeev Singh and Sri Siddhartha Sah, and

have carefully gone through the entire material on record including the impugned judgment and award.

It has been submitted on behalf of the appellant that the driver of the offending Tanker was not holding a valid driving licence on the date of accident, therefore, breach of policy condition was committed by the owner of the vehicle and the Insurance Company of the Tanker is not liable to pay compensation in this case. The submission of the learned counsel is against the material on record. In this case paper no. 15-C , copy of driving licence of the driver of the offending truck has been filed by the claimants before the learned Tribunal. It is evident from record that the driving licence of O.P. No.1 Mohan Lal was valid upto 27.1.2005, which was meant for heavy motor vehicle. D.W.1 Mohan Lal has appeared in the witness box on behalf of the opposite parties. He has not disputed the validity of his driving licence produced by the claimants. Moreover, the appellant-Insurance Company has not led any evidence to controvert the validity of the driving licence of O.P. No.1 Mohan Lal. The learned counsel could not point out as to how the driving licence possessed by the driver Mohan Lal is invalid. The learned Tribunal has elaborately dealt with the matter on Issue No.2 and has recorded a clear-cut finding to the effect that the driver of the offending Tanker was holding a valid driving licence. We are unable to differ from the view taken by the learned Tribunal. Therefore, the argument of the learned counsel is not tenable and is turned down.

It has further been submitted by the learned counsel for the appellant that the Insurance Company has a right to contest the case on all the grounds available to the owner of the vehicle. We have been referred to the application made by the appellant before the Tribunal for permission under Section 170 of othe Act. We have considered this aspect also. It Singh true that the appellant has filed application for permission under Section 170 of the Act on 1.5.93, and permission was also accorded to the appellant vide order dated

1.5.2003. In this order, it has been mentioned that the opposite party nos. 1 and 2 are not appearing in the case and the case has been ordered to proceed ex-parte against them, but it is clear from the record that subsequently, the opposite parties have participated in the proceedings to contest the case. There is no finding of the learned Tribunal that there is collusion between the claimants and the owner of the vehicle. The appellant, in consequence of the permission, has cross-examined the witnesses before the learned Tribunal.

So far as the contention of the appellant that the accident in question was the result of contributory negligence of the scooterist and the driver of the Tanker is concerned, it is evident from a perusal of the record that the learned Tribunal has framed Issue No.4 to the following effect:

> ***Whether the alleged accident was caused due to rash and negligent driving of the scooter by the deceased?***

In this case, one independent witness, namely, P.W.2 Mukesh Kumar has been produced by the claimants. This witness has given ocular account of the accident on oath. This witness has informed the family of the deceased about the accident. From the testimony of P.W.2 is comes out that he has fairly narrated the material details of the motor accident and he appears to be a trustworthy witness. This witness has been cross-examined on behalf of the appellant. In his cross-examination, he has categorically stated that the accident was caused in his presence. In the cross-examination, this witness has specifically stated that the accident has occurred due to rash and negligent driving by the driver of the offending Tanker. The learned counsel for the appellant has failed to point out any evidence on record which may lead us to hold that the motor accident was the result of contributory negligence on the driver of the offending Tanker as well as the scooterist, the deceased. Moreover, the copy of the F.I.R., paper no. 27-C/2, copy of charge-sheet, paper no. 29-C/2, inquest report, 28-C/2, etc. are

available on the record, which are sufficient to corroborate that the accident in question has occurred due to rash and negligent driving by the driver of the offending Tanker. In our opinion, the learned Tribunal has not committed any error in holding that the motor accident was caused due to rash and negligent driving by the driver of the offending Tanker and it was not a case of contributory negligence.

So far as the determination of compensation in the present case is concerned, the learned Tribunal has considered the pay-slip of deceased, paper no. 11-C, the copy of income tax return,m 12-C, The Tribunal has found that the deceased was aged 57 years and he would have remained in service for three years more. The Tribunal has assessed monthly loss of dependency to be Rs. 12.587/- and to assess total loss of dependency, the Tribunal has applied multiplier of 3 only, taking the remaining period of service in account. Thus, the total loss of dependency has been worked out as 12,587 x 36=Rs. 4,53,132/-. In addition, the Tribunal has awarded sums of Rs. 2,000/- towards funeral expenses, Rs. 5,000/- towards mental agony, Rs. 2,500/- towards loss of estate, total Rs. 4,62,632/-. In our opinion, the amount of compensation determined by the Tribunal is the just compensation in the present case. The findings of the Tribunal, therefore, call for no interference in this appeal.

No other point was urged or argued in this appeal.

In the result, the appeal is devoid of any merit and must fail.

The appeal is dismissed. The judgment and award, under appeal, is upheld. No order as to costs. The amount in deposit with the Court be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.

17-09-2004 **(B.S. Verma, J.)** **(P.C. Verma, J.)**

RCP